*R. R. Co. v. Wakefield,* 173 Ill., 564; the Supreme Court of Michigan in the case of *Matthews v. Lake Shore and M. S. R. R. Co.,* 110 Mich., 170; and the Supreme Court of Indiana in *The Pittsburgh, Cincinnati, Chicago and St. Louis R. R. Co. v. Stickly,* 155 Ind., 312. In the Indiana case the court said that "adverse possession of land acquiesced in by a railroad company for the statutory period prevents a recovery of such land. A railroad is not a public highway in the sense that it belongs to the people. The statute enables the railroad to take land in fee and forbids interference with the company's exclusive use, but this right must be asserted. If one occupies adversely for twenty years, land owned by a railroad company, the statute of limitations should raise a presumption of a grant. The State confers the right of eminent domain to enable a railroad to perform efficiently its duties as common carrier, but it is not evident why the State should be concerned in preventing investors in railroad stock from sustaining loss through the negligence of their agents."

A review of the decisions of the State courts shows that the weight of authority is contrary to that of the principal case, and the better opinion seems to be that when a railroad, by its negligence, has permitted the use of its land by the public under such conditions and circumstances as would give the public a right thereto, under the doctrine of adverse possession, if such land were owned by an individual, such right should not be denied merely because the land used belonged to a railroad company.

## THE ABOLITION OF THE DEFENSE OF INSANITY IN CRIMINAL CASES IS UNCONSTITUTIONAL.

The frequency with which the plea of insanity has been interposed in criminal cases within recent years, and the gross miscarriage of justice resulting from it in many instances, have caused agitation in some quarters for the abolition of the defense altogether. The Special Committee of the New York Bar Association on the Commitment and Discharge of the Criminal Insane, made, at the meeting of the Bar Association on January 18, 1910, among others, the following recommendations: "Your Committee, therefore, recommend this question for earnest consideration. Has not the time come in the development of our system of penology to relegate to the realm of the obsolete, the assumption that an

insane man cannot commit crime? In other words, ought we not to abolish the defense of insanity, and leave as the one issue to the petit jury, did the accused do the forbidden deed? If he did not, he is innocent; if he did, he is guilty, and with the state of his mind at that time the jury has nothing to do. We may have to revise our definitions of crime when intent is an ingredient, so as to bring the insane man as well as the sane within their grasp. It is not necessary now to go into that phase of the question. The point we make here is, that however legally right under existing legal concepts, it is really wrong, sociologically wrong, to find a man not guilty on the ground of insanity."

The question then is, have the legislatures of the States, under their constitutions, the power to enact laws taking away from one accused of crime the defense of insanity?

It seems that the exact question has never arisen until recently, in the case of *State v. Strasburg,* 110 Pac. (Wash.), 1020. The court in this case held, that a statute of the State of Washington, providing that insanity is no defense to a charge of crime, contravenes Article I of the constitution of that State, which provides that no person shall be deprived of life, liberty, or property without due process of law.

It was a firmly established rule of the common law that a person could not be legally punished for a crime committed by him while he was insane, and his insanity was a complete defense, and not a mitigating circumstance. *Sage v. State,* 91 Ind., 141; *Commonwealth v. Wireback,* 190 Pa. St., 138. This common law doctrine of incapacity of insane persons to commit crime is firmly fixed in our jurisprudence, and, at the time of the adoption of our State constitutions, was in full force and effect. *Commonwealth v. Rogers,* 7 Metc. (Mass.), 500.

Most of the State constitutions, if not all, contain the following provisions: "No person shall be deprived of life, liberty, or property, without due process of law," and "The right of trial by jury shall remain inviolate."

The right of trial by jury means that the right of trial by jury, as it existed in that particular commonwealth at the time when its constitution was accepted, should be continued unimpaired and

inviolate. *Whallon v. Bancroft,* 4 Minn., 109; *Taliaferro v. Lee,* 97 Ala., 92. It is evident that the accused had the right at the time of the adoption of the State constitutions, to have the question of his sanity passed upon by the jury the same as any other question of fact relating to his responsibility for the crime. The legislature cannot entirely destroy, by a process of limitation, the substance of the right of trial by jury, as this constitutional provision means more than the mere form of trial by jury, every substantive fact relating to the guilt or innocence of the accused being included within it. *Cummings v. State of Missouri,* 71 U. S., 277. "Due process of law requires that a party shall be properly brought into court, and that he shall have an opportunity when there to prove any fact which, according to the constitution and the usage of the common law, would be a protection to him or his property." *Witherbee v. Supervisors,* 70 N. Y., 228, 234; *King v. Hopkins,* 57 N. H., 334, 352.

The cases show that the legislature has the power in some cases to eliminate the element of intent. *State v. Constantine,* 43 Wash., 102; but in those cases the man was a free moral agent, and had it in his power to refrain from doing the act. No case can be found where the constitutionality of a law has been upheld which imputes intent to commit crime to an insane person. "There can be no crime without a criminal intent." 4 Blackstone, 20.

It seems from the cases cited, that the question of sanity is a substantive fact, and was such at the time of the adoption of our State constitutions, going to make up the guilt or innocence of the accused, and thus falls within the purview of the above mentioned constitutional provisions; and a State statute, that attempts to abolish insanity as a defense, is in contravention thereof and void.

### SYSTEM FOR REPORTING COMMERCIAL CREDITS BY FOREIGN CORPORATIONS HELD NOT TO BE INTERSTATE COMMERCE.

A nice distinction has been drawn by the Kentucky Court of Appeals in the recent case of *The United States Fidelity and Guaranty Co. v. Commonwealth,* 129 S. W. (Ky.), 314, showing to what extent a foreign corporation may go in furnishing intelligence or information through the medium of agents, and yet not be included within the pale of the interstate commerce clause